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Dated: April 20, 2009

Signature:

Sal Raigosa
(Sal Raigosa)

Docket No.: 30521/3054
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Thomas E. Miller

Application No.: 10/758,441

Confirmation No.: 5619

Filed: January 15, 2004

Art Unit: 2627

For: ARMATURE FOR A RECEIVER

Examiner: D. Pendleton

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under 37 C.F.R. § 41.37(a), this brief is filed within two months of the date of receipt of the Notice of Appeal submitted on February 18, 2009. The fee for submitting this Appeal Brief has been paid by credit card. In the event that any additional fees are necessary, kindly charge the cost thereof to Deposit Account No. 13-2855, Order No. 30521/3054.

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is the assignee, Knowles Electronics, LLC, a corporate entity, with its mailing address at 1151 Maplewood Drive, Itasca, IL, USA. The assignment assigning rights to Knowles Electronics, LLC is recorded in the United States and Trademark Office ("USPTO") at Reel/Frame 015071/0397.

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II. RELATED APPEALS AND INTERFERENCES

None.

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III. STATUS OF CLAIMS

Claims 1, 2 and 4-6 are pending. The pending claims are presented in the Claims Appendix of this Brief. Claims 1, 2, and 4-6 stand rejected and form the subject matter of this appeal.

IV. STATUS OF AMENDMENTS

The claims were submitted for reconsideration on November 18, 2008. The claims presented in the "Claims Appendix" and the "Summary of Claimed Subject Matter" reflect the claims as presented in the paper submitted on November 18, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Although specification citations are inserted in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to any way suggest that the terms of the claims are limited to the examples in the specification. Although, as demonstrated by the reference numerals and citations below, the claims are fully supported by the specification as required by law, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology, as is done here to comply with C.F.R. 1.192(c), does not in any way limit the scope of the claims to those examples from which they find support. Nor limitations into the claims from the specification.

Independent claim 1 recites an armature 300 for a receiver. The armature 300 comprises a first leg portion 304 having a thickness and a width. Claim 1 further recites a second leg portion 312 and a connection portion 308. The second leg portion 312 is spaced apart from the first leg portion 304. The connection portion 308 is provided to flexibly couple the first leg portion 304 with the second leg portion 312. The connection portion 308 includes a reduced non-zero thickness portion 334 having a thickness less than the thickness of the first leg portion 304. A width of the connection portion 308 is greater than the width of the first leg portion 304.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Applicant appeals from the rejection of claims 1, 2, and 4-6 as being anticipated by Tibbetts US 3,617,653 ("Tibbetts") where Tibbetts fails to disclose the thickness of the reduced non-zero thickness portion is less than the thickness of the first leg portion and the width of the connection portion is greater than the width of the first leg portion as proffered by the Examiner, and hence the rejection is improper.

VII. ARGUMENT

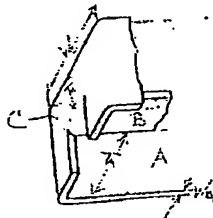
Appellant respectfully submits the rejection set forth in the final Office Action mailed August 18, 2008 is traversed.

A. REJECTION UNDER 35 U.S.C. § 102(b) IN VIEW OF TIBBETTS IS IMPROPER

Claims 1, 2 and 4-6 stand rejected under 35 U.S.C. §102(b) as being anticipated by Tibbetts (US 3,617, 653). Independent Claim 1 recites, *inter alia*, an armature with a connection portion 308 that flexibly couples a first leg portion 304 to a second leg portion 312, wherein the connection portion 308 includes a reduced non-zero thickness portion 334 that has a thickness less than a thickness of the first leg portion 304. The connection portion 308 also has a width that is greater than a width of the first leg portion 304.

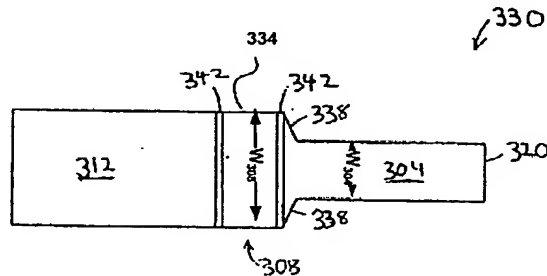
The Examiner, on page 2 of the Final Office Action dated August 18, 2008, refers to Examiner's Annotated drawings 25-1 and 25-2 which are marked-up versions of Figure 25 from Tibbetts.

Examiner's Annotated FIG. 25-1



The Examiner, however, assigns "widths" and "thicknesses" to portions of the structure shown in Figure 25-1 in an inconsistent manner. More specifically, the Examiner assigns the term W_A for the width of leg portion A. The Examiner then assigns the term W_C for the width of connection portion C. This is inconsistent in that the leg portion A is oriented perpendicular or otherwise non-parallel to the connection portion C, yet the

dimensions are being measured in the same direction (note the parallel orientation of the arrows defining the size of W_C and the arrows defining the size of W_A).

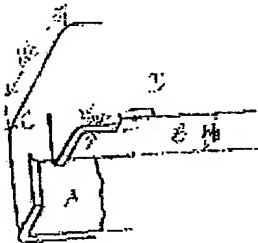


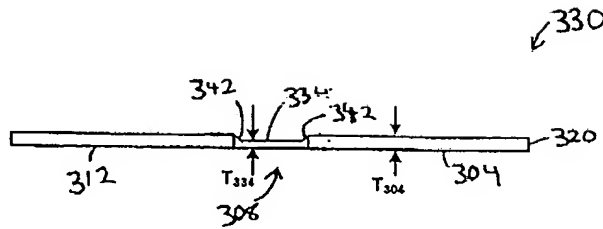
Applicant's annotated FIG. 17B

Comparing FIG. 17B of the present invention to FIG. 25-1, the first leg portion 304 and the connection portion 308 are parallel. The dimensions (W_{304} and W_{308}) are also measured in the same direction.

The same type of labeling occurs for the thicknesses of portions A and C.

EXAMINER'S Annotated FIG. 25-2





Applicant's annotated FIG. 17C

Appellant asserts that this inconsistent delegation of terms for the dimensions of the portions should not be permitted, and should not be taken into consideration. This unconventional labeling of dimensions provides an inaccurate, overbroad and unfair application of the teaching of Tibbetts to the claims of the present application.

The Examiner, in the Advisory Action dated March 2, 2009 stated:

“... in figure 25-2, annotated by the Examiner, it is clear from the figure that “WC”, which represents the width of the connection portion, is clearly of greater width than that of “WD”, which is indicated as representing the width of the first leg, regardless of a reasonable variation in scale. Furthermore, in annotated figure 25-1, the thickness of connection portion “TC”, this is the length at which leg “B” is extended outward, is clearly less than the thickness of the opposing first and second legs, indicated by “TA”, also regardless of reasonable variations in scale.”

The Examiner is using an argument that “it is clear from the figure” instead of relying on text for relative dimensions. In doing so, the Examiner is drawing conclusions independent of the specification and is, in essence, providing new material to the specification. This is obviously impermissible. It should be noted that §2125 of the Manual of Patent Examining Procedures (MPEP) states:

“Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. *In re Mraz*, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put

together.” *Jockmus v. Leviton*, 28 F.2d 812 (2d Cir. 1928).
MPEP §2125

In order to use the prior art reference drawings to reject the claims to the present invention, the Examiner must identify how the drawings teach or suggest all the claim limitations. When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value. See *Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000). For example, in FIG. 25 of Tibbetts, the reference does not demonstrate how to provide for a thickness of the connection portion being less than a thickness of the first leg portion, i.e. $T_C < T_A$ and does not demonstrate how to provide for a width of the connection portion being greater than a width of the first leg portion, i.e. $W_C > W_A$ as recited in claim 1. The drawing (FIG. 25) is merely a schematic diagram showing the conventional dimension of the armature. The diagram does not, however, show any particular thickness or width. Certainly the drawing (FIG. 25) cannot be relied upon if the specification of Tibbetts is completely silent on the issue. Although Tibbetts describes that the armature yoke 1 and the armature leg 2 could have variations in thickness (See Col. 9, ll. 26-31, FIGs. 1-4), Tibbetts does not teach or suggest that the connection portion or leg portions of the armature are to have specific relative thickness and width dimensions.

Even assuming it is permissible for the Examiner to determine relative dimensions solely from the drawings, the Examiner has then assigned the terms “width” and “thickness” to components in a manner which is unconventional and goes against the ordinary meaning of these terms. The Merriam Webster Online Dictionary defines the term “thickness” as “The smallest of three dimensions <length, width, and thickness>”. Dictionary.com defines thickness as “the measure of the smallest dimension of a solid figure”. These definitions go completely against the Examiner’s assignment of terms T_A and W_A for the thickness and width, respectively, of leg portion A in annotated Figure 25-1, since according to the Figure, thickness T_A appears larger than width W_A .

In essence, the Examiner is freely interchanging the use of the terms “thickness” and “width”. Again, this provides an inaccurate, overbroad and unfair application of the teaching of Tibbetts to the claims of the present application. In view of this shortcoming, Appellant asserts that the Examiner’s rejection is in error and should be withdrawn. For at least this reason, Appellant respectfully asserts that independent Claim 1 is allowable over Tibbett;

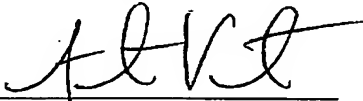
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Claims 2 and 4-6 depending therefrom are also allowable. Appellant respectfully requests the Board to reverse the outstanding anticipation rejection of Claims 1, 2 and 4-6.

Dated: April 20, 2009

Respectfully submitted,

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CLAIMS APPENDIX

1. (Previously presented) An armature for a receiver, comprising:

a first leg portion having a thickness and a width;

a second leg portion spaced apart from the first leg portion; and

a connection portion to flexibly couple the first leg portion with the second leg portion, wherein the connection portion includes a reduced non-zero thickness portion having a thickness less than the thickness of the first leg portion, and wherein a width of the connection portion is greater than the width of the first leg portion.
2. (Previously presented) An armature as defined in claim 1, wherein at least a portion of the first leg portion is at an angle to at least a portion of the connection portion.
3. (Withdrawn) An armature as defined in claim 1, wherein at least a portion of the first leg portion is parallel with at least a portion of the second leg portion.
4. (Previously presented) An armature as defined in claim 1, wherein the connection portion is integral with the first leg portion and the second leg portion.
5. (Previously presented) An armature as defined in claim 1, wherein the second leg portion comprises a first sub-leg and a second sub-leg, the first sub-leg spaced apart from the second sub-leg.
6. (Previously presented) An armature as defined in claim 5, wherein a width of the first sub-leg is substantially the same as the width of the connection portion and wherein a width of the second sub-leg substantially the same as the width of the connection portion.

7. (Withdrawn) An armature as defined in claim 5, wherein at least a portion of the first sub-leg has a width at least a width of the connection portion, and wherein at least a portion of the second sub-leg has a width at least the width of the connection portion.

8. (Withdrawn) An armature as defined in claim 1, wherein the reduced thickness portion comprises a plurality of connection legs, wherein at least one of the connection legs is separate from at least another of the connection legs.

9. (Withdrawn) An armature as defined in claim 8, wherein the connection portion further comprises:

a first region separate from at least some of the plurality of connection legs, the first region connected to one of the first leg portion and the second leg portion, and separate from the other of the first leg portion and the second leg portion;

a second region connected to the other of the first leg portion and the second leg portion; and

a cover portion spaced apart from the first region and overlapping with the first region, the cover portion overlapping with the second region.

10. (Canceled)

11. (Withdrawn) An armature as defined in claim 1, wherein a width of at least a portion of the second leg portion is at least the width of the connection portion.

12. (Withdrawn) An armature as defined in claim 11, wherein a minimum width of the second leg portion is at least the width of the connection portion.

13. (Withdrawn) An armature as defined in claim 11, wherein the thickness of the connection portion is 30% to 90% of the thickness of the first leg portion.

14. (Withdrawn) An armature as defined in claim 11, wherein the width of the first leg portion is 30% to 90% of the width of the connection portion.